ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS-66015; FRL-3948-8]

RIN 2070-AC39

Polychlorinated Biphenyls (PCBs); Reclassification of PCB and PCB-Contaminated Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the requirements that govern the reclassification of transformers from a PCB (≧500 ppm PCBs) or a PCB-Contaminated (≧50 – <500 ppm PCBs) status to a lower regulatory status as a PCB-Contaminated or a non-PCB (<50 ppm PCBs) Transformer. This proposed rule would change the methods used to reclassify transformers by: Eliminating the 50° Centigrade (C) requirement for all PCB and PCB-Contaminated Transformers; eliminating the "in-service use" requirement for all transformers with a PCB concentration of <1,000 ppm PCB; modifying the 90-day requirement for post-retrofill testing of PCB Transformers with a PCB concentration <1,000 ppm PCB; eliminating the post-retrofill testing requirement for PCB-Contaminated Transformers after retrofill; and specifying the procedures that must be followed during a retrofill for these units. This proposed rule would amend the procedure for reclassification of certain transformers and reduce the regulatory and economic burden on those in the regulated community who wish to take advantage of the reclassification procedure.

DATES: Written comments must be received on or before January 3, 1994. If persons request time for oral comment by December 3, 1993, EPA will hold an informal hearing in Washington, DC on or about January 18, 1994. If a hearing is requested, the exact time and location of the hearing will be published in the **Federal Register** at least 30 days before the hearing.

ADDRESSES: Three copies of comments identified with the docket number OPPTS-66015 must be submitted to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Rm. NE G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, FAX: (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to human health or the environment. In the **Federal Register** of May 31, 1979 (44 FR 31514), EPA permitted routine servicing but prohibited rebuilding of PCB Transformers (40 CFR 761.31(a)). Routine servicing results in minimal exposures to PCBs and allows the use of most existing transformers to continue through their useful lifetimes. Rebuilding of PCB-Contaminated Transformers was allowed based on the lower concentration and corresponding lower risks to human health and the environment. Therefore, owners of PCB Transformers could only rebuild those units if they were reclassified to <500 ppm PCBs. The guidelines for reclassification of transformers are currently found at 40 CFR 761.30(a)(2)(v).

I. Background

EPA published a final rule in the **Federal Register** of May 31, 1979 (44 FR 31514) which, among other things, authorized the rebuilding of PCB-Contaminated Transformers with concentrations <500 ppm. Owners of PCB Transformers who wished to rebuild these units were required to reclassify them to PCB-Contaminated status prior to rebuilding (40 CFR 761.31(a)). Reclassification is the process by which a high PCB concentration in a transformer can be converted to a lower PCB concentration. To reclassify a PCB Transformer, it must be drained, refilled with non-PCB dielectric fluid, placed in service (i.e., operated) for at least 3 months, and finally, tested to determine if the PCB concentration has been reduced. If the transformer was tested and determined to be <500 ppm PCBs, it could then be rebuilt rather than replaced. In 40 CFR 761.30(a)(2)(v), as published in the **Federal Register** of August 25, 1982 (47 FR 37342), EPA established more specific requirements for the reclassification of PCB Transformers. The rule currently states:

> A PCB Transformer may be converted to PCB-Contaminated Electric Equipment or to a non-PCB Transformer and, a transformer that is classified as PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB Transformer by draining, refilling and/or otherwise servicing the transformer. In order to reclassify, the transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB Transformer) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. In-service means that the transformer is used electrically under loaded conditions that raise the temperature of the dielectric fluid to at least 50° Centigrade. The Director, Exposure Evaluation Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from transformers for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

Also in this rule, EPA clarified the definition of "in-service use" for transformers by specifying that a minimum dielectric fluid temperature of 50° C must be reached. This temperature had been shown experimentally to be associated with a condition of light electrical loading, and to cause a release of PCBs from the internal components of the transformer into the dielectric fluid, i.e., leachback.

Alternate methods, as authorized at 40 CFR 761.30(a)(2)(v), involve simulating loaded conditions of in-service use. Based on the vast number of requests received for approval of alternate methods, it has been EPA's experience that these requests for an alternate method are typically necessary when a transformer has failed, is being serviced and is therefore not on line, or for some other reason cannot be operated under normal loaded conditions. Requests for reclassifying transformers using an alternate method have typically involved simulating in-service use or requesting that the temperature requirement of 50° C (interpreted by EPA to mean at whatever frequency the transformer normally reaches 50° C during operation, i.e., once per week, once per month, etc.) for the 90-day time period be waived.

Over the last few years, EPA has received information that questions the correlation between both the 90-day time period for testing after retrofill and the 50° C temperature requirements of reclassification, and the leachback of dielectric fluid from the internal components of a transformer. Additionally, information submitted to EPA indicates that many transformers, even under normal operating conditions, never reach 50° C because

the technical limitations of the equipment. Transformers may also fail to reach 50° C due to equipment failure, low ambient temperatures, or transformer loading restrictions (Refs. 3, 6, 7, 11, 12, 13, and 14).

EPA believes there are drawbacks associated with attempting to comply with the 50° C temperature requirement by simulating in-service use of the transformers. These include safety risks to maintenance personnel, fire hazards associated with energizing or insulating equipment which is not designed to withstand heavy loads or increased temperatures, and the economic and resource commitment that must be borne by the transformer owners (Ref. 4). EPA solicits comments on the validity and accuracy of these drawbacks and seeks data concerning whether to drop the 50° C temperature requirement.

The utility industry has also suggested that the 50° C requirement has no bearing on the degree of the leachback of PCBs from the internal components of a transformer. Further, EPA has been criticized for relying on a single study which correlates 50° C with "light electric loading," and thus failing to justify the selection of the 50° C temperature requirement as a criterion for reclassification (Ref. 1 and 2).

An industry-sponsored study was conducted to assess the various regulatory criteria for the reclassification of transformers. Data collected during the study were analyzed and summarized in a report (Ref. 3). The report indicates that there is no statistical correlation between the 50° C temperature or the 90–day time requirements in accelerating the leachback of PCBs from the internal components of a wide variety of PCB and PCB-Contaminated Transformers. EPA later conducted independent statistical analyses of this data and reached the same conclusions (Ref. 4). The variables addressed by this report included an assessment of the following characteristics:

1. Transformer manufacturer.
2. Transformer KVA rating.
3. Transformer age (in years).
4. Pre-retrofill PCB concentration.
5. Whether the transformer was flushed.
6. Whether the transformer was energized (i.e., whether voltage was applied to the primary side; minimally operational).
7. Whether the transformer was loaded (i.e., fully operational).
8. Whether the transformer was heated to 50° Centigrade.
9. Post-retrofill PCB concentration.
10. Number of days from "Pre" test to "Post" test. ("Pre-test" refers to the PCB concentration measured prior to the retrofill of the transformer. "Post-test" refers to the PCB concentration measured after the retrofilling procedure.)

Study data were collected from more than 380 transformers that were retrofilled by several dozen utility companies. EPA's assessment of the data, however, focused only on the 263 transformers for which the submitted data were deemed complete. The data revealed that of the 175 retrofilled transformers with pre-retrofill PCB concentrations of <500 ppm and not energized to reach 50° C, 99.43 percent were reduced to <50 ppm PCBs. The concentrations were tested both immediately after and 90 days following the retrofill. Only one transformer (0.57 percent of the units) was found to have an asymptotic (leveling off) PCB concentration >50 ppm (that concentration was 53 ppm). Further examination of 88 retrofilled, unenergized transformers, with pre-retrofill PCB concentrations ≧500 ppm, but <1,000 ppm, show that only 8 (9.0 percent) had asymptotic post-retrofill concentrations >50 ppm. The mean asymptotic post-retrofill concentration for these eight transformers was 64.4 ppm. EPA's assessment of the relevant data from actual transformers indicates that there is no correlation or direct relationship between either elevated temperatures of dielectric fluid or a 90–day in-service time period prior to testing, and an increase in the leaching of PCBs from the inner core and coil of the transformer into the newly retrofilled fluid (Ref. 4).

The conclusion which these data strongly support is that retrofilled, unenergized transformers with pre-retrofill PCB concentrations <500 ppm very rarely have PCB concentrations >50 ppm after retrofill, therefore, EPA is proposing to eliminate the post-retrofill testing requirement for these units. In addition, EPA is proposing to eliminate the 50° C and modify the 90–day time requirements for testing PCB Transformers containing <1,000 ppm PCBs.

II. Proposed Changes to the Reclassification Provision

Based upon the statistical data which suggest there is no strong evidence to support a correlation between temperature and the leachback of PCBs in a transformer, EPA is requesting comments on its proposal to modify the current regulations. The primary changes are as follows:

1. Eliminate the 50° C temperature requirement for all transformers undergoing reclassification.
2. Eliminate the 90–day "in-service use" requirement for all transformers with a PCB concentration <1,000 ppm.
3. Allow PCB Transformers with a PCB concentration <1,000 ppm to be initially tested after a 21–day time period rather than after 90 days, if a properly conducted retrofill was conducted. Then, if the results of the post-retrofill test are <25 ppm PCB, the transformer may be reclassified to non-PCB status. If the results are ≧25 – <500 ppm PCB, it may be reclassified to PCB-Contaminated status.
4. Allow immediate reclassification rather than a 90–day post-retrofill test of PCB-Contaminated Transformers to non-PCB status, after a properly conducted retrofill. An owner or operator would be able to assume, for purposes of compliance with the proposed reclassification requirements, that a properly reclassified transformer is regulated in accordance with its reclassified status. However, because of the potential for the concentration to "creep" upward, or due to errors in the reclassification process, the transformer owner would remain responsible and liable for any violation incurred if the PCB concentration of a transformer, even after a properly conducted retrofill, is tested and found to exceed the designated PCB-Contaminated or non-PCB levels.

The owner would be required to keep records, as proposed at § 761.180(a)(3), to substantiate that quality controlled and assured laboratory analyses were employed for all of the PCB concentration measurements, and that the proper reclassification procedures were followed. EPA recognizes gas chromatography as an accurate method for determining the concentration and nature of PCBs in oil (ASTM D 923–86 and 923–89). Accurate records are necessary in the event of an EPA inspection and/or subsequent PCB violation.

Owners of mineral-oil transformers who wish to take advantage of the reclassification provisions in this proposed rule would be required to test their units to determine the actual PCB concentration prior to retrofill. They could not assume that prior to retrofill the concentration is between 50 and 499 ppm. Based on the actual pre-retrofill PCB concentration in the dielectric fluid, EPA proposes, that for the purpose of identifying the procedures to be used in reclassifying transformers, the transformers be categorized into three groups by PCB concentrations that are: (1) ≧50 ppm but <500 ppm, (2)

≥500 but <1,000 ppm, and (3) ≥1,000 ppm PCB. However, the standard PCB concentration categories (<50 ppm for non-PCB, 50 ppm to <500 ppm for PCB-Contaminated, and ≥500 ppm for PCB) would still apply for designating the PCB reclassification status and for complying with all of the PCB regulatory provisions. Deviations from the requirements of this proposed rule would still require a waiver from EPA before undertaking such activity.

The following chart of the proposed modifications to the regulatory requirements for reclassification is provided to assist the reader in understanding this rule. It is not a substitute for the rule itself.

RECLASSIFICATION RULE CHART

Original concentrations	Proposed modification
<500 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill No testing required.
500 – <1000 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill Test after 21 days. If <25 ppm, reclassify as non-PCB. If ≥25 – <500 ppm, reclassify as PCB-Contaminated. If ≥ 500 ppm, retest after a total of 90 days.
≥1000 PPM PCB.	Remove 50° C In-service loading is still required Drain, flush (optional) and fill Testing still required after 90 days to determine PCB status.

III. Rationale Of Proposed Modifications

A. 50° Centigrade Requirement

This rule proposes to eliminate the 50° C temperature requirement for all reclassification of PCB and PCB-Contaminated Transformers. The original intent of the 50° C requirement was to achieve a temperature that would allow the natural convection forces of the dielectric fluid to circulate within the transformer (47 FR 37354, August 25, 1982). It was believed that this oil movement promoted leaching of PCBs from the core and coil and other internal parts of the transformer into the dielectric fluid and, thus, accelerated the process of reaching PCB equilibrium. Based on an analysis of the data indicating that temperature has little bearing on the leachback of PCBs into the dielectric fluid, as discussed under Unit I. of this preamble, EPA is soliciting comments on whether to drop the 50° C temperature requirement for all PCB and PCB-Contaminated Transformers.

B. In-Service Use Requirement

Using the same rationale as for eliminating the 50° C requirement, EPA also proposes to eliminate the "in-service use" requirement for transformers contaminated with <1,000 ppm PCB. But, any transformer with a 1,000 ppm or greater PCB concentration, such as most substation power transformers, must undergo a minimum 90–day in-service use period and post-retrofill testing. The difference between small, distribution transformers and the large, substation power transformers is that distribution transformers are usually PCB-Contaminated, are more peripherally located throughout a region than the substation power systems, and are difficult and dangerous to sample after having been reconnected. Most pole-top transformers fall into this "distribution transformer" category, as do many other equivalent size power transformers such as pad-mounted transformers which are usually located on a concrete foundation. The larger power transformers contain greater volumes and higher concentrations of PCBs and, therefore, pose a potentially greater risk to the environment and human health. The in-service use requirement on the larger transformers poses less of a burden for those who operate them. Since they are essential for supplying major sources of power, most are in service on a regular basis. Furthermore, due to the design of the equipment and their locations, they can be conveniently and safely sampled while in active service.

Although there is some overlap between large, substation power transformers and typically smaller, distribution transformers, further support for distinguishing between the two categories is found in an American National Standards Institute (ANSI) publication C57 (Sections C57.12.20 through C57.12.26). ANSI indicates that distribution transformers with less than a 500 Kilovolt-ampere (KVA) rating are not required to have sampling valves. Power transformers, however, will almost always have sampling valves to allow for easy sampling of the transformer fluid (Ref. 5). Sampling valves are most typically found on transformers with a KVA rating of 500 or greater.

In a letter from Baltimore Gas and Electric (BG&E) to EPA (Ref. 12) BG&E states that distribution transformers with a KVA rating of 500 or less are not required to have sampling valves, and that sampling these units outside of the shop environment is precarious. BG&E argues that the 500 KVA benchmark for distribution transformers is a logical breakpoint for not requiring post retrofill testing, i.e., distribution transformers 500 KVA and below need not be tested and those greater than 500 KVA should be tested. EPA is soliciting comments on the appropriateness of factoring in the KVA rating of particular transformers insofar as it relates to the type of reclassification/sampling schedule a transformer owner may opt for, or whether the pre-retrofill concentration of the transformer, regardless of KVA rating, should be the only criteria. In addition, if KVA rating should be factored in, is there a corresponding PCB concentration that should be associated with that KVA rating, i.e., should testing be required of a transformer with ≥500 KVA and ≥1000 ppm PCB or should testing be required of only those transformers ≥500 KVA regardless of PCB concentration. EPA's analysis of the data that were submitted for review looked exclusively at the PCB concentration of the transformers and did not factor the KVA rating into the reclassification equation. EPA, therefore, solicits data to support the relevance of including KVA rating into the reclassification equation.

C. Post Retrofill 90–Day Testing Requirement

1. *Elimination of post-retrofill testing requirement for transformers <500 ppm PCBs.* This rule proposes to eliminate the 90–day, post-retrofill test requirement for transformers containing pre-retrofill concentrations of <500 ppm PCBs, thereby allowing for immediate reclassification of PCB-Contaminated Transformers to non-PCB status after a properly conducted retrofill. Based on the data and rationale provided in Unit III.C.1 of this preamble, routine testing of retrofilled PCB-Contaminated Transformers may not be necessary to verify that PCB levels are <50 ppm. EPA is soliciting comments on whether PCB-Contaminated Transformers with a PCB concentration of <500 ppm should be immediately reclassified to non-PCB status (i.e., <50 ppm) after a properly conducted retrofill procedure as proposed in § 761.30(a)(2)(v). A "properly conducted retrofill" would mean a procedure where: (a) The PCB dielectric fluid is drained from the transformer and stored and disposed of pursuant to the storage and disposal requirements of 40 CFR 761.65 and 761.60 and the manifest requirements at § 761.207 to § 761.209; (b) the transformer is flushed with no less than

10 percent of the transformer's volume (as reflected on the original nameplate) with a dielectric fluid that contains <2 ppm PCBs or with solvent in which the solubility of PCBs is 5 percent or more by weight (the flush material must be stored and disposed of in accordance with § 761.65 and § 761.60 and the manifest requirements of § 761.207 to § 761.209 must be adhered to); and (c) the transformer is refilled with <2 ppm PCB dielectric fluid. If no nameplate exists that provides volume information, the transformer height, width and depth would be measured to estimate the volume.

2. *Transformers with a PCB concentration ≧500 ppm but <1,000 ppm.* EPA is soliciting comment on its proposal to modify the 90–day requirement of § 761.30(a)(2)(v) for testing PCB Transformers with ≧500 ppm but <1,000 ppm PCBs. Transformers with PCB concentrations ≧1,000 ppm PCBs will continue to be subject to the requirement to test the fluid 90 days after the retrofill.

To take advantage of the shortened post-retrofill testing requirement, i.e., 21 days vs. 90 days, for transformers between ≧500 and >1,000 ppm, the transformer would be required to undergo a properly conducted retrofill.

A statistical review conducted by EPA of the data submitted for 380 transformers of varying concentrations indicates that a properly conducted retrofill process removes a very high percentage of the PCBs (Ref. 4). A comparison of PCB concentration levels, at various points of time after a retrofill, indicates that leachback occurs at the highest rate over the first few days and becomes statistically insignificant over time. Of all of the transformers tested, the vast majority which showed asymptotic (leveling off) PCB levels above 10 percent of the original PCB concentration had relatively low initial PCB concentrations (i.e., <200 ppm PCB). This means that a transformer with a pre-retrofill PCB concentration of 200 ppm may retain up to 25 percent of the original PCBs and still fall below the 50 ppm criterion for reclassification as a non-PCB Transformer. Over 80 percent of the transformers which were tested 90 days after such a retrofill, retained less than 8 percent of the original PCB concentration.

A post-retrofill measurement of the PCB level of the dielectric fluid would be required for reclassification to non-PCB status (i.e., <50 ppm) for all transformers with a PCB concentration ≧500 ppm. If the original PCB concentration of a transformer is ≧500 ppm but <1,000 ppm PCB, the post-retrofill measurement would be required to be taken at least 21 days after the last retrofill. If 21 days after retrofill the PCB concentration in the transformer is <25 ppm, the transformer would be immediately reclassified to non-PCB status. The existing transformer retrofill data indicate that the asymptotic PCB concentration in properly retrofilled transformers has a low statistical probability to ever increase as much as 200 percent over their tested post–21–day PCB concentration. Transformers that have a PCB concentration ≧25 ppm but <500 ppm after 21 days could be immediately reclassified to PCB-Contaminated status. If non-PCB status is still desired, retesting would be required 90 days after the initial retrofill. If the 90–day retest shows a PCB concentration of <50 ppm, the transformer would be immediateiy reclassified to non-PCB status. If the retest shows ≧50 – <500 ppm PCB it would be reclassified to PCB-Contaminated status.

EPA is proposing 25 ppm as the maximum concentration allowable for designation as non-PCB status after the 21–day test based on its analysis of existing industry test data. EPA solicits comment on whether this new limit is reasonable given the results of existing or new industry test data. Would setting the limit higher than 25 ppm be reasonable since there is a low statistical probability for the PCB concentration in a range above 25 ppm to exceed 50 ppm after 90 days? Alternatively, is a limit lower than 25 ppm justified? EPA also solicits comment on whether setting a limit of 25 ppm for non-PCB status would impose an unnecessary burden on retrofillers that desire non-PCB status due to the potential for test results to fall between 25 ppm and 50 ppm after the 21–day test and still be less than 50 ppm after 90 days.

If reclassification of transformers ≧500 ppm – <1000 ppm PCB is not achieved after one retrofill, EPA is proposing that 90 days elapse between each subsequent retrofill. The goal is to achieve a stable equilibrium between the PCBs within the internal components and the transformer core's dielectric fluid. Use of this approach is at the discretion of the transformer owner or operator. Notwithstanding a "properly conducted retrofill," the transformer owner or operator would remain responsible and liable for any subsequent violations associated with the reclassification of any transformer due to potential statistical deviations, laboratory calibration errors, variations in the design of the different models of transformers, etc.

3. *Transformers ≧1,000 ppm.* PCB Transformers with a PCB concentration ≧1,000 ppm must still be drained, refilled, and tested after a minimum of 90 days of in-service use, as currently specified at 40 CFR 761.30(a)(2)(v), in order to determine whether the transformer has been reclassified. However, under this proposal, the requirement to reach the 50° C temperature level would be eliminated. EPA lacks information on whether a properly conducted retrofill and/or the elimination of the post 90–day test after retrofill for transformers ≧1,000 ppm PCBs is warranted. EPA solicits comments and/or data on this issue.

The proposed modifications to the reclassification requirements of § 761.30(a)(2)(v) should eliminate the need for submission of individual waiver requests to EPA, especially for those transfonners <1,000 ppm PCBs. If, however, the transformer owner wished to deviate in any way from the specifications of the modifications contained in this proposed rule (e.g., by not employing a "properly conducted retrofill" as defined in Unit III.C.1 of this preamble and as proposed at § 761.30(a)(2)(v), by failing to wait the designated amount of time prior to conducting the post-retrofill, or by failing to obtain a laboratory analysis of the post-retrofill PCB concentration, etc.), the transformer would not be reclassified and the owner could be subject to an enforcement action if the owner is not in compliance with all of the appropriate regulatory provisions.

4. *Electromagnets, switches, and voltage regulators ≧500 ppm PCBs.* Currently, the PCB regulations at § 761.30(h)(2)(v) allow for the reclassification to non-PCB or PCB-Contaminated status of those voltage regulators, switches and electromagnets that are ≧500 ppm PCBs. The regulation does not require these pieces of electrical equipment to reach 50° C but does require a minimum of 3 months of in-service use subsequent to the last servicing conducted for purposes of lowering the concentration of this equipment. In this proposed rule, EPA is soliciting comments and requesting supporting data on whether the proposed criteria in this rule for PCB and PCB-Contaminated Transformers are also appropriate or viable for these other pieces of electrical equipment. In § 761.30(h)(2)(v), as is already the case in § 761.30(a)(2)(v), EPA is proposing to change the approval authority for granting the use of alternate methods to simulate the loaded conditions of in-service use from the Assistant Administrator to the Director of the Chemical Management Division. EPA solicits comments on this proposed change in approval authority.

In addition, EPA is proposing recordkeeping requirements pursuant to § 761.180(a)(3) for this electrical equipment undergoing reclassification.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule would not be a "major rule" as that term is defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule would, in fact, mitigate the burden on industry to comply with requirements for reclassifying PCB and PCB-Contaminated Transformers. This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by Executive Order 12291.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the rule on small business entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA considers a small business to be one whose annual sales revenues are less than $40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the **Federal Register** of November 16, 1984 (49 FR 45430).

In accordance with section 605(b) of the Act, the Administrator certifies that this proposed rule, if promulgated, would not have a significant adverse economic impact on a substantial number of small business entities. Rather, it would relieve the burden placed on business by modifying the current regulations. In addition, EPA is sending a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. EPA has determined that the recordkeeping requirements of this proposed rule constitute a "collection of information" as defined at 44 U.S.C. 3502(c).

The information collection requirements of this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act. An amended Information Collection Request document has been prepared by EPA (OMB Control numbers 2070–0112 and 2070–0061). The public recordkeeping burden for this collection of information is estimated to be 15 minutes per each reclassification project. These are records that are already generated by the respondent. This estimate is based on the need to maintain these documents on file at the facility.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Chief, Information Policy Branch (PM–223), Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460. These comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked ATTENTION: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements in this proposal.

V. Public Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents which constitute the record of this proposed rulemaking. This record includes basic information considered by the Agency in developing this proposal. The official records of previous PCB rulemakings are incorporated by reference as they exist in the TSCA Public Docket. A full list of these materials is available for inspection and copying in the TSCA Public Docket Office. However, any Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection. The address for the TSCA Public Docket Office appears under the "ADDRESSES" section of this proposed rule.

A. Previous Rulemaking Records

(1) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." Final Rule. 44 FR 31514, (May 31, 1979).

(2) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment." Final Rule. 47 FR 37342, (August 25, 1982). Docket #OPTS–62015C.

B. References

(1) "Equilibrium Study of PCBs Between Transformer Oil and Transformer Solid Materials," by Electric Power Research Institute (EPRI). (December 3, 1981).

(2) Letter from C. H. Manger of Baltimore Gas and Electric Company to Denise Keehner, USEPA/OPTS/EED, challenging the 50° C temperature criterion of reclassification. (July 27, 1987).

(3) Baltimore Gas and Electric Company. "PCB-Contaminated Distribution Transformer Reclassification Study." Baltimore Gas and Electric Company, Electric Test Department, Paul J. Frey, (August 1986).

(4) Memorandum from Dan Reinhart to Tony Baney, "Background Report on Empirical Basis for Proposed Changes to Reclassification Criteria for PCB and PCB-Contaminated Transformers", USEPA/OPPTS/OPPT/EED/DDB, undated.

(5) American National Standards Institute, Inc, The Institute of Electrical and Electronics Engineers, Inc., Distribution, Power, and Regulating Transformers. Standard numbers: (a) C57.12.20–1988, (b) C57.12.21–1980, (c) C57.12.22–1989, (d) C57.12.23–1986, (e) C57.12.24–1988, (f) C57.12.25–1981, and (g) C57.12.26–1987.

(6) Excerpt from PCB Seminar Notebook, San Diego, California, October 3–9, 1989, Sponsored by the Electrical Power Research Institute, "Reclassification: Simulating In-service Use", H. Carl Manger, Baltimore Gas and Electric.

(7) Letter from Richard E. Bell, Resource Planning Corporation to Carl Manger, Baltimore Gas and Electric. Results of analysis from transformer retrofill data. (April 24, 1989).

(8) Letter from Don Clay, Director, Office of Toxic Substances, EPA, to Tim Hardy, Kirkland and Ellis. What constitutes in-service use and simulation of in-service use for purposes of reclassifying electrical transformers containing PCBs. (June 13, 1984).

(9) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90–day testing

requirements for reclassification of 95,000 pole-top transformers. (November 29, 1990).

(10) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90–day testing requirements for reclassification of 95,000 pole-top transformers. (May 22, 1991).

(11) Memorandum from Dan Reinhart, EPA/OPTS/EED, to Joe Davia, EPA/OPTS/EED, "Examination of the Relationship Between PCB Leaching and Load Level in Transmission Transformers by Baltimore Gas and Electric Company." (May 20, 1988).

(12) Letter from H. C. Manger, Baltimore Gas and Electric Company to Jan Canterbury, EPA/OPTS/EED. Possible changes to the regulations regarding reclassification of oil-filled transformers containing PCBs. (July 24, 1991).

(13) Letter from Gil Addis, Electric Power Research Institute to Jan Canterbury, EPA/OPTS/EED. Reclassification of Mineral Oil transformers contaminated with PCB, and Askarel transformers. (November 6, 1990).

(14) Letter from Dana S. Myers, S.D. Myers Transformer Consultants to Jan Canterbury, EPA/OPTS/EED. Average operating temperature of an askarel transformer. (August 16, 1991).

(15) PCB Residues in Transformer Carcasses. EPRI EL–6237, Project 2028–19, Final Report, August 1989. Prepared by the General Electric Company, Pittsfield, Massachusetts.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Therefore, it is proposed to amend 40 CFR Chapter I, as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.30 by revising paragraphs (a)(1)(iii)(C)(*2*)(*iii*), (a)(2)(v), and (h)(2)(v), to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) * * *

(*2*) * * *

(*iii*) Once a retrofilled transformer has been installed for reclassification purposes, it must follow the procedures specified in paragraph (a)(2)(v) of this section.

* * * * *

(2) * * *

(v) A PCB Transformer that has been tested and determined to have a concentration between ≧500 and <1,000 ppm PCBs may be reclassified to a PCB-Contaminated Transformer or a non-PCB Transformer, and a PCB-Contaminated Transformer may be reclassified to a non-PCB Transformer by first performing a properly conducted retrofill. A properly conducted retrofill means the PCB dielectric fluid is drained from the transformer and stored and disposed of in accordance with § § 761.60 and 761.65 and the manifest requirements of § § 761.207 to 761.209 must be adhered to. Then the transformer must be flushed with dielectric fluid below 2 ppm PCB or a solvent in which PCBs are at least 5 percent solubie by weight using no less than 10 percent of the original nameplate volume. If no nameplate exists that provides volume information, the transformer must be flushed with PCB dielectric fluid containing less than 2 ppm PCB or a solvent in which PCBs are at least 5 percent soluble by weight using no less than 10 percent of the estimated volume of the transformer. The flushed dielectric fluid must be stored and disposed of in accordance with the requirements of § § 761.60 and 761.65 and the manifest requirements of § § 761.207 and 761.209 must be adhered to. The transformer must be refilled with dielectric fluid below 2 ppm PCB.

(A) After properly retrofilling the transformer in accordance with the requirements in paragraph (a)(2)(v) of this section, the reclassification must be conducted as follows:

(*1*) A PCB Transformer that has been tested and determined to have PCB concentrations between ≧500 and <1,000 ppm must be tested by a laboratory using an EPA-approved test method at least 21 days after the retrofill. The PCB Transformer may be reclassified to a non-PCB status if testing shows that the post-retrofill PCB concentration is <25 ppm. If the post-retrofill PCB concentration is ≧25 ppm but <500 ppm, the transformer may be reclassified to PCB-Contaminated status. If non-PCB status is still desired, the PCB Transformer must be re-tested 90 days after the initial retrofill to determine if it may be reclassified to a PCB-Contaminated status if the test shows a post retrofill concentration of ≧50 but <500 ppm, or non-PCB status, if the post retrofill concentration is <50 ppm.

(*2*) A transformer that has been tested and determined to be PCB-Contaminated (50 to <500 ppm) may be reclassified immediately to a non-PCB Transformer (<50 ppm).

(B) A PCB Transformer that has been tested and determined to be ≧1,000 ppm PCBs must be operated electrically under loaded conditions for 90 days after retrofill. After 90 days, the transformer must be analyzed for PCB concentration by a laboratory using EPA-approved testing methods. If the test shows a PCB concentration of 50–499 ppm, the transformer may be reclassified to PCB-Contaminated status. If the test shows a PCB concentration of <50 ppm, the transformer may be reclassified to non-PCB status. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of electrical operation.

(C) If the owner still wishes to reclassify the transformer but the test indicates failure to achieve the desired lower PCB status, the entire process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated.

(D) Transformer owners that are reclassifying or have reclassified their transformers must keep records pursuant to § 761.180(a)(3).

(E) If, after reclassification, the transformer is tested and found to contain a higher PCB concentration, (i.e., ≧50 ppm if non-PCB status was desired or ≧500 ppm PCB if PCB-Contaminated status was desired) the reclassification is void, and the transformer is classified based on its actual concentration. The process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated if reclassification is still desired. The transformer owner remains liable for any subsequent violation incurred if the PCB concentration of the transformer is found to exceed the designated PCB-Contaminated or non-PCB level after reclassification.

* * * * *

(h) * * *

(2) * * *

(v) An electromagnet, switch or voltage regulator with a PCB concentration of at least 500 ppm may be converted to PCB-Contaminated Electrical Equipment or to non-PCB status and PCB-Contaminated Electrical Equipment may be reclassified to non-PCB status by draining, refilling and/or otherwise servicing the equipment. In order to be reclassified, the equipment's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or

less than 50 ppm PCB (for conversion to a non-PCB classification) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the equipment. In-service use means that the transformer is used electrically under loaded conditions. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from this equipment for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60. In addition, records must be kept pursuant to § 761.180(a)(3).

* * * * *

3. In § 761.180 by adding paragraph (a)(3), to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) * * *

(3) Transformer owners and owners of electromagnets, switches, and voltage regulators that are reclassifying or have reclassified such equipment must keep the following documentation for at least 3 years after the equipment has been disposed of:

(i) The pre-retrofill concentration of the equipment.

(ii) The retrofill and reclassification schedule and procedure.

(iii) A copy of the analysis indicating the equipment's reclassified status (i.e., final PCB concentration).

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